

GEORGE H. WILLIS ET AL.

IBLA 80-647

Decided April 27, 1981

Appeal from a decision of the Alaska State Office, Bureau of Land Management, declaring appellants' mining claims abandoned and void. AA-33570 to AA-33579.

Affirmed.

1. Federal Land Policy and Management Act of 1976: Recordation of Mining Claims and Abandonment--Mining Claims: Abandonment

The failure to file the instruments required by sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), and 43 CFR 3833.1 and 3833.2, in the proper Bureau of Land Management office within the time periods prescribed therein conclusively constitutes abandonment of the mining claim by the owner.

APPEARANCES: George H. Willis for appellants.

OPINION BY ADMINISTRATIVE JUDGE BURSKI

George H. Willis and Nick Mellick appeal the April 1, 1980, decision of the Alaska State Office, Bureau of Land Management (BLM), which declared appellants' mining claims, the Barometer Nos. 1 to 10, abandoned and void. The location notices indicate the claims were located between September 3, 1952, and September 23, 1953, and they were filed for recordation with BLM on October 17, 1979. Appellants failed to file 1979 affidavits of assessment work or a notice of intention to hold the mining claims by October 22, 1979. Therefore, BLM notified appellants that failure to file timely the affidavits of assessment work or notices of intention to hold constituted an abandonment of the mining claims and that the claims were void.

[1] Section 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), provides, in relevant part:

(a) The owner of an unpatented lode or placer mining claim located prior to October 21, 1976, shall within the three-year period following October 21, 1976, and prior to December 31 of each year thereafter, file the instruments required by paragraphs (1) and (2) of this subsection \* \* \*.

(1) File for record in the office where the location notice or certificate is recorded either a notice of intention to hold the mining claim (including but not limited to such notices as are provided by law to be filed when there has been a suspension or deferment of annual assessment work), an affidavit of assessment work performed thereon, on a detailed report provided by section 28-1 of Title 30, relating thereto.

(2) File in the office of the Bureau designated by the Secretary a copy of the official record of the instrument filed or recorded pursuant to paragraph (1) of this subsection, including a description of the location of the mining claim sufficient to locate the claimed lands on the ground.

Inasmuch as the claims were located prior to October 21, 1976, the documents required by section 314 were required to be filed on or before October 22, 1979. Beryl Rhodes, 46 IBLA 287 (1980); Amanda Mining & Manufacturing Association, 42 IBLA 144 (1979).

Where the owners of unpatented mining claims located prior to October 22, 1976, fail to file affidavits of annual assessment work or notices of intention to hold the claims on or before October 22, 1979, their claims are properly deemed to be abandoned and to be null and void. 43 U.S.C. § 1744(c) (1976).

In the original submissions, appellants noted that the 1979 assessment work had been performed on September 3 and 4, 1978, for the Alice and Bessie claims Nos. 1-4. No reference was made therein to the Barometer Nos. 1 to 10. The document filed on April 26, 1980, cannot serve as a notice of intention to hold, since it was clearly untimely.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

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James L. Burski  
Administrative Judge

We concur:

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Douglas E. Henriques  
Administrative Judge

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Bruce R. Harris  
Administrative Judge

